IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 19TH SEPTEMBER 2006 / 28TH BHADRA 1928

WP(C).No. 13676 of 2006(C)

PETITIONER:

P. RAVEENDRAN, S/O. PONNAN,
AGED 58 YEARS, DRIVER (RETD.), K.S.R.T.C.,
TRIVANDRUM CENTRAL AND RESIDING AT KAMALKRISHNA,
NANDAVAN ROAD, PALAYAM, TRIVANDRUM.

BY ADV. SRI.N.UNNIKRISHNAN

RESPONDENTS:

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1. THE KERALA STATE ROAD TRANSPORT
CORPORATION, TRANSPORT BHAVAN, FORT,
THIRUVANANTHAPURAM, REP. BY THE MANAGING DIRECTOR.

2. THE DISTRICT TRANSPORT OFFICER,
K.S.R.T.C., CENTRAL, THIRUVANANTHAPURAM.

BY ADV. SRI.P.PARAMESWARAN NAIR, SC, KSRTC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19/09/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

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W.P.(C) No.13676 OF 2006

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DATED THIS THE 19TH SEPTMBER, 2006

J U D G M E N T

A retired driver of the K.S.R.T.C., being aggrieved by the denial of revised grade promotion benefits and also by the taking away of the grade promotion given to him wayback in 1987 and 1997, has filed this Writ Petition. The petitioner joined the service of the K.S.R.T.C. as Driver Gr.II on 4.2.1977 by direct recruitment and retired from service on attaining superannuation on 30.4.2002. Due to physical disabilities, he applied for category change in 1987. But the application was rejected. However, from 1.8.1988 to 20.9.1993, considering his actual health condition, he was posted as Store Attender on working arrangement. In between, he was examined by the Medical Board and by 1992-93, he was relieved from the duty of Store Attender and posted to line duty. But he did not report for duty. Therefore, he was removed from service with effect from 17.10.1993. Later, that order was modified as reduction in rank by 100 places and the period of absence was regularised as leave without allowance on medical grounds. On 30.4.2002 he was re-admitted to duty as driver.

He complains that though his lien was always as driver, the respondents interfered with his service conditions and refixed his pay scale to that of a Store Attender without any notice to him. Against the unilateral refixation of pay in a post which was lower than that of the cadre post of driver, he submitted representation. He approached this court, obtained Ext.P1 judgment and got a direction regarding consideration of the representation. On the basis of Ext.P1 the 1st respondent issued Ext.P2 memorandum allowing the representation to the extent of canceling the refixation of pay and restoring the fixation of pay as Driver Gr.II for the period during which the petitioner worked as Store Attender, i.e., from 1.8.1988 to 20.9.1993. It was however observed that in view of grade promotion rules, the above period during which he worked out of regular cadre will not be counted for grade promotion. The petitioner complains that he is yet to get the revised pension and arrears in terms of Ext.P2. He submitted Ext.P3 representation on 5.4.2006. Voicing his grievances regarding denial of grade promotion, he submitted Ext.P4 representation on the same day. He points out that he was given grade promotion only as follows:

Driver Grade I – w.e.f. 2.3.1987

Selection Grade – w.e.f. 24.3.1997

Special Grade – w.e.f. 24.3.1997

According to him, he ought to have been given Driver Gr.I with effect from 4.2.1986, Selection Grade with effect from 24.3.1992 and Special Grade with effect from 4.2.1995. He impugns Ext.P2 on various grounds and prays that it be declared that Ext.P2 is bad in law since the same takes away the grade promotion granted to him and denies refixed grade promotion benefits to him. He also seeks a writ of mandamus commanding the respondents to grant the revised grade promotion benefits with effect from 4.2.1986, 4.2.1992 and 4.2.1995 and thereafter as Vehicle Supervisor in 2001.

2. On behalf of the 1st respondent, a detailed counter affidavit has been filed by their Law Officer. It is contended therein that as per clause (c) of the Grade Promotion Rules applicable to the employees of the K.S.R.T.C., service rendered by any employee in a post out of the regular channel of promotion will not be qualifying service for promotion in the regular channel. This was why the period from 1.8.1988 to 20.9.1993 during which the petitioner worked as Store Attender was not counted as qualifying service for grade promotion since the same was outside his regular channel. As for the

petitioner's claim for promotion as Vehicle Supervisor, it is contended that promotion as Vehicle Supervisor under the ratio of promotion can be given only according to seniority in the post of Special Grade Driver. He was given Special Grade on 24.3.2000 on completion of 18 years. Hence as per the seniority list, he was not eligible for promotion to the post of Vehicle Supervisor before his date of retirement. It is also pointed out that the petitioner who had absented from duty with effect from 17.10.1993 was removed from service of the Corporation with effect from that date. Later that punishment was modified on the request of the petitioner as one of reduction in rank by 100 places. Thereby he forfeited his seniority which disqualified him from getting promotion as Vehicle Supervisor.

3. Answering these contentions, a detailed reply affidavit has been filed by the petitioner. It is contended therein that category change was never allowed for the petitioner and all along he has retained his lien as Driver. Answering the contention in para.5 of the counter affidavit, the reply contends that there is no "clause (c) of the grade promotion rules" and that the said expression itself is vague. What the 1st respondent means is Rule 9(c) and the contention based on that rule is totally misconceived. Approved channel of the

petitioner is driver only. Therefore, he is entitled to get grade promotion to the post of Vehicle Supervisor. As per Ext.P2 memorandum, the lien of the petitioner as driver has been admitted and restored and therefore he is to get grade promotion only in the channel of driver and later, Vehicle Supervisor. Clause 9(c) would be applicable only to a category change from one post to another and continuing as such. No material has been placed by the respondents to show that there has been any category change in the case of the petitioner. The petitioner is entitled to be treated all along as driver and the post of Vehicle Supervisor concededly being promotion post of drivers, he cannot be denied promotion as Vehicle Supervisor. The contentions in the counter affidavit go directly against Ext.P2 issued by the 1st respondent-Managing Director. The deponent who is only a Deputy Law Officer is not entitled to swear to such a counter affidavit. Promotion to the post of Vehicle Supervisor is based on seniority in the entry cadre, i.e., driver Gr.II. On the other hand, grade promotion is based on qualifying service. The period between 1.8.1988 and 20.9.1993 has been treated as period during which he worked as driver only, as per Ext.P2 judgment which is referred to by this Court in Ext.P1. Therefore, the 1st respondent is not justified in taking a

contrary stand now. As per Ext.P2 referred to in Ext.P1, the period during which the petitioner worked as Store Attender is to be treated as one during which he worked as driver for all purposes. Even as per Ext.P2 issued by the 1st respondent, the petitioner is entitled for all consequential benefits. No materials have been produced by the respondents to substantiate their contentions. The reply denies the contention that the petitioner forfeited his seniority to claim grade promotion to the post of Vehicle Supervisor before retirement on 30.4.2002. No material has been produced along with the counter affidavit to show that there has been such a forfeiture. Grade promotion and cadre promotion are totally different. The deponent is trying to mix them up for the purpose of defeating the ends of justice. The contentions raised therefore are not bona fide.

3A. I have heard the submissions of Sri.N.Unnikrishnan, learned counsel for the petitioner and also those of Sri.P.Parameswaran Nair, Standing Counsel for the K.S.R.T.C. I have considered the pleadings in this case and the averments placed on record. I have also considered the averments in W.P.(C)No.15248 of 2005 as well as Ext.P2 produced therein which is copy of judgment in O.P.14522 of 1997. Ext.P2 dealt with the case of a driver who on account of his

physical disabilities was posted as Store Attender and continued in that post for a period of three years before he was deployed back to line duty. All through, the petitioner in that case retained his lien as driver and was also considered for promotion as First Grade Driver. But when steps were taken for re-fixing his pay in the scale of Store Attender during the period he worked as Store Attender, he submitted representations against such refixation. Since the representations were not of any avail, he approached this Court and this Court under Ext.P2 judgment held that unless there is a category change and that too with the concurrence of the P.S.C., the incumbents are entitled to draw the salary on the post which they are holding substantively. On that reasoning, this Court further held that the petitioner in that case is entitled to get salary of driver.

4. In the instant case also, it is conceded that there has been no change of category of the petitioner as driver to that of Store Attender even as he was actually working as Store Attender and much less with the concurrence of the P.S.C. Under Ext.P2 the 1st respondent actually set aside the order holding the petitioner as a Store Attender for the period from 1.8.1988 to 20.9.1993 and declared that throughout the petitioner will be treated as driver only and is

entitled for consequential benefits for the period from 1.8.1988 to 20.9.1993. It was on that basis that the salary arrears and annual increments were released to the petitioner. There is however an observation in Ext.P2 that "in the light of the grade promotion rules, the above period he worked as Store Attender, i.e., out of his regular cadre, will not be counted for grade promotion". The impact of this observation is that the same interferes with the grade promotion actually granted to him on 2.3.1987, 24.3.1997 and 24.3.1997. It appears to that the distinction between the rules to be followed in the matter of cadre promotion and grade promotion has been overlooked by the respondents. Promotion to the post of Vehicle Supervisor from the cadre of Driver has necessary to be given on the basis of the seniority in the entry cadre which is Driver Gr.II. But grade promotion is always made on the basis of duration of qualifying service. The period between 1.8.1988 and 20.9.1993 can be treated as a period during which the petitioner served as Driver. It has been so held in the judgment of this court in O.P.No.14522 of 1997 which was relied on by the present petitioner in the writ petition which led to Ext.P1 judgment. The direction of this court in Ext.P1 was that decision shall be taken in the light of Ext.P2 which this court clearly indicated was

relevant. The benefits which was given to the party in Ext.P2 referred to in Ext.P1 could not be denied to the petitioner in this case where the K.S.R.T.C. has not disputed the petitioner's case that the post of Vehicle Supervisor is the promotion post of Drivers. Even as per Ext.P2 order issued by the 1st respondent the period between 1.8.1988 to 20.9.1993 is to be treated as a period during which the petitioner was worked as a Driver for all purposes. Therefore, I do not find any reason as to why the benefits which naturally flow out of such treatment should not be allowed to the petitioner in full. In fact in paragraph 4 of Ext.P2 it is stated that "the District Transport Officer, Thiruvananthapuram Central is therefore directed to look into the matter personally and arrange to revise the pay from 1.8.1988 onwards and to release all the consequential benefits for the period from 1.8.1988 to 20.9.1993 as Driver to Sri.P.Raveendran, Driver (Retired on 30.4.2002) urgently." I find force in the submissions of Mr.Unnikrishnan that the endeavour in the counter affidavit is to deny the benefits which are legitimately due to the petitioner. In the Writ Petition he has clearly stated that in 1987 due to his physical disability he applied for category change which was rejected. But considering the physical condition he was posted as Store Attender on working

arrangements for the period from 1.8.1988 to 29.9.1993. In between he was examined by a Medical Board. Later on 1992-93 he was relieved from that duty and posted to line duty. However, due to ailment, he could report for duty only on 21.9.1993. Without considering the contentions of the petitioner, he was removed from service with effect from 17.10.1993 vide Order No.VLE-3/005009/94 dated 31.5.1995 and later it was modified as reduction in rank by 100 places and the period was treated as Leave Without Allowance on medical grounds. He was readmitted to duty on 30.4.2002 as Driver. These averments are not seen denied. I do not find any evidence or materials placed in the counter affidavit which would substantiate the contention that the petitioner forfeited his seniority to grade promotion to the post of Vehicle Supervisor before he retired on 30.4.2002. Grade promotion and cadre promotion are totally different and it appears that the respondents are mixing the same to the detriment of the petitioner.

5. The result of the above discussion is that the Writ Petition will stand allowed. It is declared that Ext.P2 to the extent it takes away the grade promotion and denies revised grade promotion benefits is illegal. There will be a direction to the respondents to grant revised

grade promotion benefits with effect from 4.2.1986, 4.2.1992 and 4.2.1995 and thereafter as Vehicle Supervisor in 2001 within three months of receiving a copy of this judgment.

(PIUS C. KURIAKOSE, JUDGE)

tgl/srd